THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No.26253 of 2006

20-12-2006

Between:-

Sheelam Swamy

Petitioner

And

The Superintendent of Police, Nalgonda,
Nalgonda district and ten others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 26253 of 2006

Oral order:

The petitioner seeks a unique relief couched in general terms. The petitioner seeks a direction to the respondents "not to interfere with the life and personal liberty of the petitioner except in accordance with procedure established under law, and to grant such other relief or reliefs as this Hon'ble court deems fit and proper in the circumstances of the case."

The petitioner asserts to being the District Secretary of Nalgonda CPI (ML)(L) Party, which is claimed to be a political organization working amongst rural poor, organized and unorganized labour. The petitioner asserts that the Party is not banned either in the State or anywhere else in the country. The petitioner also asserts

that respondent Nos. 10 and 11 do not belong to the Party and were not members of the Party at any point of time. The petitioner asserts that the Party has no faith in armed struggle and none of the members carry weapons and the Party is engaged in peaceful and democratic endeavors.

According to the petitioner, in the first week of November, 2006, when the petitioner was away from the village, he was informed by the family that the police had come in search of him. The petitioner thereafter claims to have gone to the concerned police along with State and Regional Secretaries of the Party and informed them that he is not involved in any crime under any police station. According to the petitioner, two or three days later, the police again sent a word for him and again he explained his position.

The petitioner learnt that the respondent Nos. 10 and 11 are trying to implicate him in false cases and that an F.I.R. No. 112 of 2006 on the file of Police Station, Suryapet (Rural) was registered against the petitioner under Section 395 of the Indian Penal Code and Section 27 (2) of the Arms Act. According to the petitioner, crime No. 112 of 2006 aforesaid was registered based solely on the confessions of respondent Nos. 10 and 11. There is no other material, except the confessions of these respondents connecting the petitioner with the crime, is the contention. The petitioner contends that the

confessional statement of a co-accused is not admissible in evidence and no crime could be registered on the basis of such tainted and inadmissible evidence. It is also asserted that the first respondent had directed the third respondent to collect information before the petitioner is arrested. The petitioner complains that without conducting any further investigation, the police are trying to take him into custody. He seeks relief on the aforesaid contentions.

Crime No. 112 of 2006 alleges offences under Section 395 of the Indian Penal Code and Section 27 (2) of the Arms Act, against six (6) accused including the petitioner, who is arrayed as the fifth accused.

On behalf of the petitioner, learned senior counsel Sri B. Tarakam relies on an observation of the Supreme Court in

K.H. Amulakh v. State of Gujarat [1] (at paragraph No.14 AIR report) wherein it is held:

> *"14. The confessional statement, Ex.27, which was made by the accused to Sub Inspector Rojia and which formed the basis of the first information report was not admissible in evidence as the same was hit by Section 25 of the Indian Evidence Act. We may in this connection refer to the case of Aghnoo Nagesia v. State of Bihar, (1996) 1 SCR 134 = (AIR 1966 SC 119) wherein this Court held that no part of a first information report lodged by the accused with the police could be admitted into evidence if it was in the nature of a confessional statement. The statement could, however, be admitted to identify the accused as the maker of the report. The part of the information as related distinctly to the fact discovered in consequence of the information could also be*

admitted into evidence under Section 27 of the Indian Evidence Act if the other conditions of that section were satisfied."

Sri Tarakam, learned senior counsel contends that the Supreme Court, *qua* the first sentence in (paragraph No.14 of) the judgment must be construed to have laid down the law that a first information report based on a confessional statement made to the police is not admissible in evidence as it is hit by Section 25 of the Indian Evidence Act, 1872.

This Court is not called upon to go into the question whether F.I.R. No. 112 of 2006 is wholly inadmissible in evidence since it is based on a confessional statement by respondent Nos. 10 and 11, who are accused Nos. 1 and 2 thereat. Questions of relevancy of facts gathered or admissibility of the evidence is not to be considered at the stage of investigation. As seen from the First Information Report, on the basis of a complaint made by one Bhukya Venkanna son of Bixam resident of Sapavath thanda, H/o. Pinnaipalem village dated

14-10-2006, crime No. 112 of 2006 was registered and investigation commenced. During the course of investigation, witnesses were examined and on the basis of statements made by the witnesses including the first and second accused, all the five accused were arrayed as accused in crime No. 112 of 2006. No provision of law is brought to the notice of this court, which invalidates the

registering of crime No. 112 of 2006 against the petitioner as accused No.5 merely on the ground that the petitioner is arrayed as an accused on the basis of no other material, except the information derived from what is contended to be the confessional statements of respondent Nos. 10 and 11 herein. If the investigation could legitimately be pursued into crime No. 112 of 2006, there is no warrant for granting any relief to the petitioner in this writ petition.

Sri Tarakam, learned senior counsel also places reliance on the judgment of the Supreme Court in ***Joginder Kumar v. State of U.P.*** [2], in particular the observations in paragraph No.20 of the SCC report wherein the Supreme Court spelt out guidelines to be considered before proceeding to arrest pursuant to investigation of an offence. These guidelines were spelt out on the basis of the Third Report of the National Police Commission and other material including from the Royal Commission on Criminal Procedure of England with a view to sensitize the investigatorial process of the constitutional frame work which places personal liberties on a high-pedestal and guarantees them from unreasonable State encroachments. It is not necessary at this point of time to assume that the official respondents are oblivious of the guidelines elucidated by the Supreme Court in *Joginder Kumar's case (2 supra)*.

It requires to be noticed that the petitioner does not seek quashing of crime No. 112 of 2006 either in its entirety or *pro tanto* insofar as it relates to arraying the petitioner as accused No.5. If the petitioner is not seeking quashing of the First Information Report, the petitioner cannot seek interdiction of the investigatorial process. If the petitioner apprehends arrest or is arrested in connection with the investigation in crime No. 112 of 2006, the petitioner has available appropriate remedies under the Code of Criminal Procedure, 1973 for seeking bail in anticipation of arrest or a regular bail. Should the petitioner be desirous of quashing of F.I.R. 112 of 2006, the petitioner has also a remedy under Section 482 of the Code of Criminal Procedure. When an arrest is made in contravention of law, the petitioner has ample remedy, as already stated, either for an anticipatory relief or a post event relief apart from seeking appropriate remedies including pecuniary damages for transgression of law by the executive agencies of the State. At any rate, the law declared by the Supreme Court is binding and need not be reiterated under Article 226 of the Constitution of India. The writ petition is creatively drafted, but seeks a relief, which is outside the pale of review under Article 226 of the Constitution of India. There are no merits. The writ petition is dismissed at the stage of admission. No costs.

GODA RAGHURAM, J

Dated:20-12-2006
Pvks/*

L.R. Copy to be marked: Yes/No

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1 AIR 1972 SC 922
2 (1994) 4 SCC 260